

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ARNOLD P. NERENBERG  
and JERRY SHEPHERD

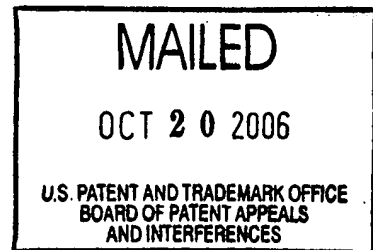
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Appeal 2006-1635  
Application 09/584,610<sup>1</sup>  
Technology Center 2100

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ON BRIEF

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Before: FLEMING, Chief Administrative Patent Judge, HARKCOM, Vice-Chief Administrative Patent Judge, JERRY SMITH, BLANKENSHIP, and MACDONALD, Administrative Patent Judges.

MacDONALD, Administrative Patent Judge.

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<sup>1</sup> Application filed May 31, 2000. The real party in interest is Mental Health Services, Inc., Appeal Brief (filed October 1, 2004), page 1.

## **DECISION ON APPEAL UNDER 35 U.S.C. § 134**

### **I. INTRODUCTION**

1. All the world's a stage,  
And all the men and women merely players.  
WILLIAM SHAKESPEARE, AS YOU LIKE IT act 2, sc.7.
2. Applicants appeal from a final rejection entered April 30, 2003.
3. The appeal contains claims 1, 4-10, 12-17, and 19-21.
4. Claims 2, 3, 11, 18, and 22-35 have been cancelled.
5. Claims 1, 4-8, 12-17, and 19-21 have been rejected under  
35 U.S.C. § 102 (b) on the grounds that the claims are anticipated by the prior art.
6. Claims 9 and 10 have been rejected under 35 U.S.C. § 103 on the  
grounds that the claims are obvious in view of the prior art and Official Notice.
7. The principal issues before the Board are whether Applicants have  
established that the Examiner erred in rejecting claims 1, 4-8, 12-17, and 19-21 based  
on anticipation and erred in rejecting claims 9 and 10 based on obviousness.

## **II. FINDINGS OF FACT**

The following findings of fact are believed to be supported by a preponderance of the evidence.

### *A. The Invention*

1. The invention, as filed, relates to a therapeutic method and structure that relates to healing estranged relationships, enhancing positive relationships, and breaking destructive habits (Applicants' spec., p. 1, ll. 4-6). All claims to the structure were cancelled during prosecution and the invention on appeal relates to only the therapeutic method.

2. Applicants allege existing methods for healing estranged relationships, enhancing positive relationships, and breaking destructive habits generally require therapy or other treatment over long periods of time such as over weeks, months, or years. Applicants further allege such lengthy treatment is not only time consuming and expensive, but also may prove to be unsuccessful or minimally successful after an expenditure of substantial time and money (spec., p. 1, ll. 8-12).

3. Applicants allege results of the invention include, healing estranged relationships, enhancing positive relationships, and breaking destructive habits, in a manner that produces long-term beneficial results, and in a time-efficient manner that is cost effective (spec., p. 2, ll. 17-19).

4. The disclosed method of invention comprises the steps of (spec., p. 1, l. 17 through p. 2, l. 2):

providing a coffin, wherein the coffin is visually available to a first person;  
directing the first person to see a second person as being in the coffin; and  
prompting the first person to express to the second person an emotion that the first person has in relation to the second person.

5. Additionally, the disclosed method may comprise a preliminary step of (spec., p. 2, ll. 3-4):

pretesting a first person for a contraindication against continuing with the method;  
and if the pretesting step fails to disclose the contraindication, performing the remaining steps.

6. Applicants allege that the present invention creates a strong appreciation of a second person by a first person by having a first person mentally experience a sense of loss of the second person (spec., p. 2, ll. 20-21).

7. Applicants also allege that a relationship between first and second person may be healed or enhanced by increasing an appreciation of the second person by the first person, and vice versa (spec., p. 3, ll. 13-15).

8. Applicants further allege that a first person gains an increased appreciation of a second person which has the effect of healing or enhancing the

relationship by inducing in the first person a sense or impression of loss of the second person (spec., p. 3, ll. 16-18).

9. Applicants' brief description of the drawings states (spec., p. 3, ll. 6-9):

FIG. 1 of Applicants' specification depicts a top view of a coffin [10], a first person [12], and a facilitator [30], in accordance with embodiments of the present invention.

FIG. 2 depicts a side cross-sectional view of the coffin [10] of FIG. 1.

Shown at Appendix 1 are identical drawings from Applicants' published application 10/211,217, filed August 1, 2002, claiming continuity to the present application.

10. Applicants' FIG. 1 illustrates a top view of a space 42 that includes a coffin 10, a first person 12, and a facilitator 30, in accordance with embodiments of the present invention. The space 42 may include a boundary 40 or the boundary 40 may be absent, or the space 42 may be partially open (spec., p. 3, l. 20 through p. 4, l. 6).

11. The first step includes providing the coffin 10 such that the coffin is visually available to the first person 12 (spec., p. 6, ll. 12-13).

12. Applicants' FIG. 1 illustrates the coffin 10 is visually available to the first person 12 by virtue of being located in a space 35 defined by lines 32 and 34 respectively drawn from the first person 12 to the edges 17 and 18 of the coffin 10 (spec., p. 4, ll. 8-10).

13. The coffin 10 is considered "visually available" to the first person 12 even if the first person 12 is facing away (such as in a direction 45) from the coffin 10, since the first person 12 could rotate by an angle that would make the coffin 10 visible to the first person 12 (spec., p. 4, ll. 10-13).

14. Further, the coffin 10 is considered "visually available" to the first person 12 under the following conditions (spec., p. 6, l. 13 through p. 7, l. 1):

Under lighted conditions, an object is said to be visually available to a person who is not totally blind, if any portion of the object is visible to the person who is not totally blind, or would be visible to the person who is not totally blind if the person who is not totally blind were to turn his or her head without engaging in translational motion. Under conditions of darkness, an object is said to be visually available to a person who is not totally blind if the object would be visually available to the person who is not totally blind under lighted conditions. Under either light conditions or conditions of darkness, the object is said to be visually available to a totally blind person, if the coffin 10 would be visually available to a person not totally blind and standing in place of the totally blind person. Thus, the coffin 10 may be visually available to the first person 12 under either lighted or darkness conditions, regardless of whether or not the first person 12 is totally blind.

15. The coffin 10 may include a second person 20, a pillow 4, and an electronic device 22. (spec., p. 4, l. 14).

16. The second person 20 is a living person who may be in the coffin 10, in the space 42 but not in the coffin 10, or outside of the space 42. The first person 12 and the second person 20 have a relationship which may be familial (e.g., husband and wife, parent and child, brother and sister) or non-familial (e.g., friends, business associates) (spec., p. 5, ll. 18-22).

17. The second step of the method of the present invention includes directing the first person 12 to see the second person 20 as being in the coffin 10 (spec., p. 7, ll. 10-11).

18. In a first disclosed embodiment of the invention, seeing the second person 20 in the coffin 10 requires the second person 20 to be in the coffin 10 such that the first person 12 physically sees the second person 20 in the coffin 10 (spec., p. 7, ll. 11-13).

19. In a second disclosed embodiment of the invention, seeing the second person 20 in the coffin 10 is accomplished by mentally visualizing the second person 20 as being in the coffin 10 (said mental visualizing being accomplished by the first person 12) regardless of whether or not the second person 20 is actually in the coffin 10 (spec., p. 7, ll. 13-16).

20. Further, the first person 12 is said to physically see or mentally visualize the second person 20 in the coffin according to the following conditions (spec., p. 7, l. 16 through p. 8, l. 3):

The first person 12 is said to physically see or mentally visualize the second person 20 in the coffin if the first person 12 physically sees or mentally visualizes any portion of the body of the second person 20 as being in direct physical contact with the coffin 10, said direct physical contact may include a portion of the body of the second person 20 being within an interior space 11 of the coffin 10 (e.g., lying, sitting or standing in the coffin 10). Thus, it is within the scope of the present invention for the second person 20 to be seen or visualized as being in physical contact with only an exterior portion of the coffin 10. Mental visualization may be aided by having an object identified with the second person 20 in the coffin 10, such as a picture of the second person 20 or a piece of jewelry that the first person 12 identifies with the second person 20.

21. The "directing" of the second step may be performed as follows (spec., p. 8, ll. 4-10):

The "directing" in the second step may be accomplished either with or without the facilitator 30. If the facilitator 30 is a person, then the facilitator 30 may accomplish said directing in any manner, such as by commanding, suggesting, begging, threatening, etc. If the facilitator 30 is a facilitating device (e.g., a tape recorder), then the facilitator 30 may accomplish said directing in a predetermined manner (e.g., by playing a specific tape on the tape recorder). The directing may be accomplished without a facilitator in any manner, such as by the first person 12 self-directing himself or herself to see the second person 20 as being in the coffin 10.

22. The third step of the method of the present invention is utilized to deepen or intensify the aforementioned sense or impression of loss so as to induce a significantly enhanced appreciation of the second person 20 by the first person 12. Accordingly, the third step of the method of the present invention includes prompting the first person 12 to express to the second person 20 an emotion that the first person 12 has in relation to the second person 20 (spec., p. 8, ll. 13-17).

23. The emotion may be any positive emotion such as love, appreciation, gratitude, respect, trust, admiration, etc. (spec., p. 8, ll. 17-18).

24. The expression of the emotion may be verbal, non-verbal, oral, by conduct, or through combinations thereof. Examples include (spec., p. 8, l. 18 through p. 9, l. 3):

[T]he expression of the emotion may be accomplished by the first person 12 saying, by talking or thinking, to the second person 20 (irrespective of whether or not the second person 20 is physically present) such words as, *inter alia*: "I love you"; "I miss you"; "I appreciate what you did for me"; "I am sorry that I showed you disrespect"; "I wish that I had a second



chance"; and combinations thereof. [The] first person 12 may: weep; smile; bow in reverence; physically or mentally touch, hold, or kiss the second person 20, etc.

25. Applicants state "[t]here is virtually no limit to the manner in which the first person 12 may express the emotion to the second person 20." (spec., p. 9, ll. 3-4).

26. The "prompting" of the third step may be performed as follows (spec., p. 9, ll. 5-11):

The prompting in the third step may be accomplished either with or without the facilitator 30. If the facilitator 30 is a person, then the facilitator 30 will accomplish said prompting in any manner, such as by commanding, suggesting, begging, threatening, etc. If the facilitator 30 is a facilitating device (e.g., a tape recorder), then the facilitator 30 will accomplish said prompting in a predetermined manner (e.g., by playing a specific tape on the tape recorder). The prompting may be accomplished without a facilitator in any manner, such as by the first person 12 self-prompting himself or herself to express the emotion to the second person 20.

27. Applicants allege the aforementioned three steps collectively serve to create a sense or impression of loss of the second person 20 by the first person 12 so as to substantially increase the appreciation of the second person 20 by the first person 12 (spec., p. 9, ll. 12-15).

28. Applicants allege that as a result, the relationship between the first person 12 and the second person 20 will be healed if estranged, or enhanced if positive and not estranged (spec., p. 9, ll. 15-16).

29. Applicants allege the invention may be used to help the first person 12 break a destructive habit that may include, inter alia, a habitual practice such as: a habitual using of an illegal drug, a habitual smoking of tobacco, a habitual drinking of alcoholic beverages to a point of intoxication, a habitual aggressive driving of a motor vehicle, or a habitual showing of disrespect to a parent of the first person 12 (spec., p. 9, ll. 17-21).

30. When the invention is used for breaking destructive habits, the second person 20 is the same person as the first person 12 (spec., p. 12, ll. 1-2).

31. Applicants' invention may include pre-testing (i.e., testing prior to the first step, the second step, and the third step) of the first person 12 to determine if implementing the next three steps is contraindicated. The pre-testing may include questions requiring a "yes" or "no" response (spec., p. 12, l. 22 through p. 13, l. 3).

32. Applicants' invention may also include post-testing subsequent to the three steps (spec., p. 13, ll. 19-20).

33. Applicants allege the post-testing serves both an evaluative and a therapeutic purpose as follows (spec., p. 14, ll. 13-21):

The evaluative purpose is realized because of the questions' focus on ascertaining information concerning thoughts and attitudes of the first person 12 as a consequence of the Death Visualization Therapy that the first person 12 participated in. The therapeutic purpose is realized because, in answering the post-testing questions, the positive attitudes and emotions of the first person 12 toward the second person 20 are reinforced by the thought processes of the first person 12 while answering the post-testing questions. For example, in answering "yes" to the

question "Did the therapy bring you closer to your parent?", the first person 12 has engaged in a focused awareness of his or her feeling of closeness to the second person 20.

34. Only Applicants' first disclosed embodiment of the invention is before us on appeal.

*B. Prosecution history*

35. The application filed May 31, 2000, contained claims 1-34, as shown herein at Appendix 2. Claims 1, 19, 22, and 34 are independent claims with the remaining claims depending therefrom.

36. As filed, claims 1 and 19 were directed to all three embodiments of the disclosed invention, and claims 22 and 34 were directed to the second embodiment.

(1)  
*Examiner's First Non-Final and Final Rejections*

37. On September 29, 2000, the Examiner entered a non-final office action (First Non-final) rejecting claims 1-34 under 35 U.S.C. § 101 because they were directed to non-statutory subject matter (First Non-final at pages 2-3).

38. In a telephonic interview (First Interview) on November 21, 2000, the Examiner indicated (First Interview Summary at page 3):

[The] claims could be written to overcome rejections under 35 U.S.C. § 101 by drafting method claims that first defined the elements involved in the method, and then defining the actions involved in the method without delving into the thought processes performed by the

users. [The] Examiner also emphasized that any preliminary tests should be more fully defined.

39. Responsive to the First Non-final, on January 23, 2001, Applicants filed an amendment (Amendment A) amending claims 1, 4, 5, 12-13, 19-22, 25, and 28-31, and cancelling claims 11, 18, 33, and 34, all as shown herein at Appendix 3.

40. As amended by Amendment A, claims 1 and 19 were directed to both embodiments of the disclosed invention, and claims 22 and 34 was directed to the second embodiment (see Findings of Fact 18 and 19).

41. Also on January 23, 2001, Applicants filed a declaration under 37 C.F.R. § 1.132 (First Declaration) from the first named inventor declaring (indentation formatting added):

(1) I have been licensed by the State of California as a Psychologist since 1974.

(2) I have practiced Death Visualization Therapy, as described and claimed in the present invention, with about 30 clients and have found Death Visualization Therapy to be very useful.

(3) The following findings are included among my findings of usefulness of Death Visualization Therapy.

(a) The invention includes:

(i) directing a first person to see a second person as being in a coffin; and

(ii) instructing the first person to speak to the second person.

(b) As a result of the Death Visualization Therapy, I have found the first person to become much more aware of:

(i) how much he or she loves the second person,

(ii) how much he or she appreciates the second person, and

(iii) how much he or she would miss the second person if the second person were to die.

(c) I have also observed the first person to expresses [sic] regret for disrespect previously shown to the second person by the first person.

(d) I have observed the first person to express a desire to have a second chance to improve his or her relationship with the second person.

(e) Generally, I have observed a strengthening of emotional bonding between the first person and the second person.

(f) I have found the benefits of Death Visualization Therapy described *supra* to generally persist beyond the direct Death Visualization Therapy experience.

(4) Based on my observations and professional experience, I expect the benefits of Death Visualization Therapy to persist for months or years depending on the nature and facts of the prior relationship between the first person and the second person.

42. On April 23, 2001, the Examiner entered a final office action (First Final) rejecting claims 1-5, 9, 10, 12-17, 22-25, and 28-32, under 35 U.S.C. § 102(b) as being anticipated by Brocato et al., U.S. Patent 5,256,068. The Examiner also rejected claims 6-8, 19-21, and 26-27 under 35 U.S.C. § 103 as being unpatentable over Brocato et al.

43. Responsive to the First Final, on June 25, 2001, Applicants filed an after final amendment (Amendment B) amending claims 1 and 19, and cancelling claims 2, 3, and 22-32, all as shown herein at Appendix 4.

44. As amended by Amendment B, claims 1 and 19 were directed to the first disclosed embodiment (see Finding of Fact 18).

45. On July 9, 2001, the Examiner entered an advisory action (First Advisory), stating:

The proposed amendment(s) will not be entered because they raise new issues that would require further consideration and/or search. Claims 1-10 and 12-17 would overcome the Brocato reference as amended, but may conflict with a method of acting, [where] an actor speaks to another actor portraying a deceased individual.

\* \* \*

Newly proposed or amended claims 19-21 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claims.

46. Subsequently, the Examiner approved the entry of Amendment B into the record as filed. The record before us fails to indicate the reason for the entry.

(2)  
*Examiner's Second Non-Final and Final Rejections*

47. On September 6, 2001, the Examiner entered a non-final office action (Second Non-final) rejecting claims 1, 4-8, 12, and 14-17, under 35 U.S.C. § 102(b) as being anticipated by Official Notice of the Examiner. The Examiner stated:

Examiner takes Official Notice that it was known in the art at the time of invention to conduct plays or movies with actors in a scene in which a first actor is speaking to a second actor who is displayed in a coffin. Both actors are living persons. The action of the scene being directed by a director.

An example of a play would be Romeo and Juliet written by Shakespeare, in which Romeo observes Juliet in a state of death on an open display stand and speaks to Juliet. An example of a movie or screenplay would be the movie "Mommy Dearest" (Paramount Pictures, released 1981) in which a first actress portraying Christina Crawford spoke to a second actress portraying Joan Crawford, who was displayed in an open coffin. In both the play and the movie, the actors operated under the direction of a director.

The Examiner also objected to claims 9, 10, and 13, as being dependent from a rejected base claim, but allowable if rewritten in independent form. Finally, the Examiner indicated that claims 19-21 were allowable.

48. Responsive to the Second Non-final, on September 17, 2001, Applicants filed an amendment (Amendment C) amending claim 1 and adding new claim 35, all as shown herein at Appendix 5.

49. As amended by Amendment C, claims 1 and 19 were directed to the first embodiment (see Finding of Fact 18).

50. On March 14, 2002, the Examiner entered a final office action (Second Final) objecting to claim 35 as not further limiting the subject matter of the base claim, and indicating that claims 1, 4-10, 12-17, and 19-21 were allowable.

51. In a telephonic interview (Second Interview) on March 19, 2002, the Applicants agreed to cancel claim 35 by Examiner's amendment (Second Interview Summary).

(3)

*Allowance and Withdrawal from Allowance*

52. On June 5, 2002, the Examiner entered a "Notice of Allowability of the patent application indicating that claims 1, 4-10, 12-17, and 19-21 were allowable. This Notice closed prosecution before the U.S. Patent and Trademark Office (USPTO).

53. On February 7, 2003, Applicants filed an Information Disclosure Statement (IDS) listing the book ARNOLD P. NERENBERG, DEATH VISUALIZATION THERAPY (1999), (Nerenberg hereinafter), the copyright registration for the book, and a "Wireless Flash VX3 For Monday, July 26, 1999" news release. Copies of each document were filed with the IDS.

54. The "Wireless Flash" news release was directed to the first embodiment of Death Visualization Therapy where a person is in the coffin and stated in part:

One person climbs into the casket and pretends to be dead while the others say things to the "deceased" that they have always wanted to say but haven't.

55. Also as part of the IDS, Applicants filed a declaration under 37 C.F.R. § 1.132 (Second Declaration) from the first named inventor declaring:

(1) I made a limited disclosure of the use of a coffin for improving relationships on July 26, 1999 to newspapers, radio stations, and television stations through Wireless Flash News, Inc. which is a news distribution service.

(2) Said disclosure on July 26, 1999 via Wireless Flash News, Inc. reflected my practice using a coffin which I initiated with some of my patients no earlier than July 12, 1999.



(3) I printed a single copy of my book "Death Visualization Therapy" for my own use on March 20, 1999, and I did not publicly distribute or make publicly available said single copy.

(4) I printed 110 copies of said book "Death Visualization Therapy" on December 20, 1999, as denoted in an INVOICE in Exhibit A [attached], for subsequent distribution to my patients and others.

(5) Aside from said single copy printed on March 20, 1999, I did not print any copy of my book "Death Visualization Therapy" prior to the printing of said 110 copies on December 20, 1999.

56. On April 16, 2003, the USPTO entered a "Withdrawal From Issue" pursuant to 37 C.F.R. § 1.313, to permit reopening of prosecution of the present patent application. The application was then forwarded to the Examiner for further action.

(4)  
*Examiner's Third Non-Final and Final Rejections*

57. On April 30, 2003, the Examiner entered a non-final office action (Third Non-final) rejecting claims 1, 4-8, 12-17, and 19-21, under 35 U.S.C. § 102(b) as being anticipated by Nerenberg. The Examiner also rejected claims 9 and 10 under 35 U.S.C. § 103 as being unpatentable over Nerenberg and Official Notice that the usage of audio and video devices to record the statements and behavior of individuals is very well known in psychology and psychotherapy. Finally, the Examiner rejected claims 1, 4-10, 12-17, and 19-21 under 35 U.S.C. § 101 because they were directed to non-statutory subject matter in that the method steps lacked a "useful, concrete, and tangible result."

58. The Examiner treated the Nerenberg book as having a publication date of March 20, 1999 (Third Non-final at page 6). This date is more than one year prior to the May 31, 2000 filing date of the present application. The Examiner found the Second Declaration was not effective to establish that the actual publication data of the Nerenberg book was after December 20, 1999.

59. Responsive to the third Non-final, on October 31, 2003, Applicants filed an amendment (Amendment D) amending claims 1 and 19, shown herein at Appendix 6.

60. Also as part of Amendment D, Applicants filed a declaration under 37 C.F.R. § 1.132 (Third Declaration) from the first named inventor substantially repeating the declarations of the Second Declaration.

61. On January 28, 2004, the Examiner entered a final office action (Third Final) repeating the rejections of the Third Non-final under 35 U.S.C. § 102(b) and 35 U.S.C. § 103. The Examiner dropped the rejection under 35 U.S.C. § 101. The Examiner found the Third Declaration was not effective to establish that the actual publication data of the Nerenberg book was after December 20, 1999.

(5)  
*Appeal from the Third Final Rejection*

62. Appellants filed an appeal brief on October 1, 2004, appealing the final rejection of claims 1, 4-10, 12-17, and 19-21, shown herein at Appendix 7.

63. The Examiner mailed an Examiner's Answer on October 31, 2005.

64. Appellants filed a reply brief on December 12, 2005.

*C. Nerenberg*

65. Nerenberg documents activities that occurred on or before March 20, 1999 when it was first printed by the first named inventor for his own use (see Finding 55 (3) supra).

66. Applicants have not submitted evidence to show that the activities, documented by the Nerenberg reference, were directed to experimental use of the invention.

67. Nerenberg describes a "Case History" (Nerenberg, pp. 3-17).

68. Nerenberg describes the case history as "a typical example of the method and results of Death Visualization Therapy" (Nerenberg, p. 4, ll. 1-2).

69. Nerenberg describes the case history as including a relationship (disrespect) between a first living person (Joe) and a second living person (his mother) (Nerenberg, p. 4, ll. 2-4).

70. Nerenberg describes the case history as including a behavior modification relating to improving a relationship between the first and second person (as shown by Joe's statement to his mother) (Nerenberg, p. 13, ll. 4-6).

71. Nerenberg describes the case history as including providing a coffin, wherein the coffin is visually available to the first person (Joe) (Nerenberg, p. 8).

72. Nerenberg describes the case history as including directing the first person (Joe) to see the second person (Joe's mother) as being in the coffin (Therapist: "If . . . she were lying in this coffin) (Nerenberg, p. 9, ll. 1-3).

73. Nerenberg describes the case history as including instructing the first person to speak to the second person in relation to a relationship between the first person and the second person (Therapist: "say to her what you would want to say if she were really in [the coffin]") (Nerenberg, p. 9, ll. 6-8), (Joe: "I'm so, so sorry for the disrespect I showed you.") (Nerenberg, p. 10, ll. 3-5), and (Therapist: "Joe, tell Mom you wish you could see her just one more time to show her how you really feel.") (Nerenberg, p. 10, ll. 12-15).

74. Nerenberg describes the case history as including instructing the first person to speak to the second person of an emotion that the first person has for the second person (Therapist: "say to her what you would want to say if she were really in [the coffin]" and Joe: "Mom, I love you.") ) (Nerenberg, p. 9, ll. 6-9).

75. Nerenberg describes the case history as including a facilitator consisting of a professional therapist (the Therapist) (Nerenberg, p. 5, l. 1).

76. Nerenberg describes the case history as including in the coffin a pillow that is visually available to the first person ("a white pillow placed where the head of a corpse would be") (Nerenberg, p. 8, ll. 3-4).

77. Nerenberg describes the case history as including a top end of the coffin partially covers the coffin ("[The bottom half [of the top end or lid of the coffin], where the torso and legs would be, is closed.") (Nerenberg, p. 8, ll. 4-5).

78. Nerenberg describes the case history as including after the instructing step, questioning the first person using a question having predetermined fixed responses and pertaining to the first person's attitude toward the second person (Therapist: "I ask Joe if he feels closer to his Mom than he did before.") (Nerenberg, p. 11, ll. 1-2).

79. Nerenberg describes the case history as including directing the first person to envision himself or herself as being at his or her moment of despair (MOD) in relation to a destructive habit that the first person has. (Therapist: "Tell her . . . how sorry you are for the disrespect you showed her.") (Nerenberg, p. 9, ll. 15-19).

80. Nerenberg describes the case history as including prior to administering the therapeutic method, determining whether to continue with the therapeutic method, including questioning a first person using first questions having predetermined fixed responses, and evaluating the responses of the first person to the first questions; and if the evaluating determines that the therapeutic method should continue then providing the coffin (Therapist: "Joe, you called your mother a bitch?", "But guess who would give you a kidney?", "You believe that, Joe?", and "Do you feel ashamed?") (Nerenberg, pp. 5-7).

81. Nerenberg describes conditioning the first person to use a trigger to induce a power thought in the first person and directing the first person to pledge using a trigger for regularly inducing a power thought in the first person. (Therapist: "Joe, am I correct in understanding that you intend to be more respectful to your Mom?", "How do you plan to keep to your decision, and what will you do if you find yourself slipping?", "Do you ever pray?", and "Well, you might want to pray for help in keeping to your pledge.") (Nerenberg, p. 17) .

82. Nerenberg includes an author's "Commentary" section at pages 18-29.

83. Nerenberg's commentary states at page 19, "I had already ascertained in previous sessions that Joe loves his mother." Page 19 further states, "I had already determined that he was not psychotic or suicidal."

84. Nerenberg's commentary at page 19, also discusses exemplary therapy options that could have been used but were not. Those unused options include having Joe lie down – corpse like in the coffin and have his mother speak what was deepest in her heart.

85. Nerenberg's commentary at page 20, discusses events at Joe's therapy session and prior therapy sessions of other "patients" where Death Visualization Therapy was used.

86. Nerenberg's commentary at pages 21-23 and 29, discusses events at other prior therapy sessions of other patients where Death Visualization Therapy was used.

87. Nerenberg's commentary states at page 28, "I have never encountered a parent objecting and the parent has always been glad that the procedure was used."

88. In the case history of Nerenberg, the second person is not acting in a play or movie, and wherein the second person is not rehearsing in preparation for acting in a play or movie.

89. Nerenberg is evidence of public use or on sale activities.

90. The public use or on sale activities of the Nerenberg reference are directed to the second disclosed embodiment of the specification (see Finding of Fact 19). The second embodiment is not claimed or on appeal in the present application.<sup>2</sup>

91. Nerenberg evidences prior art vis-à-vis applicants under 35 U.S.C. § 102(b).

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<sup>2</sup> The second disclosed embodiment is claimed in divisional patent application 10/211,217 (filed August 1, 2002).

*D. Additional prior art cited by the Board*

92. We cite the following prior art:

- (1) Zuk v. E. Pa. Psychiatric Inst. of the Med. Coll. of Pa., 103 F.3d 294, 41 U.S.P.Q.2d 1296 (3d Cir. 1996).
- (2) Dennis, U.S. Patent No. 4,734,038 (issued Mar. 29, 1988).
- (3) Luke 7:14-15.

93. Zuk, Dennis, and Luke are each prior art vis-à-vis applicants under 35 U.S.C. § 102 (b).

*E. Zuk*

94. In Zuk, "Dr. Zuk, a psychologist on the faculty [of Eastern Pennsylvania Psychiatric Institute (EPPI)], early in the 1970s had an EPPI technician film two of Dr. Zuk's family therapy sessions. As academic demand for the films developed, Zuk had EPPI duplicate the films and make them available for rental through their library." Zuk, 103 F.3d at 296, 41 USPQ2d at 1298.

95. Zuk describes a technician filming therapy sessions.

96. Zuk describes making the therapy session films available for rental.

97. Zuk demonstrates that it is known in the therapy art that a therapy session and a theatrical performance (filmed therapy session) may be the same thing.



*F. Dennis*

98. Dennis describes “a method and a system for behavior modification which compels the subject to become involved, emotionally and intellectually, in the behavior modification process.” (col. 1, lines 32-35).

99. Dennis describes “a method and system for behavior modification through psycho actualized learning.” (col. 1, lines 37-38).

100. Dennis describes “modifying a selected behavior in a person by following a set of defined steps to be taken to effectuate the modification of the selected behavior includes a mnemonic device assigned to each step to promote mental identification thereof and a visual image of a role model whose behavior is to be emulated, wherein the role model acts out the steps.” (col. 1, lines 56-61).

101. Dennis demonstrates that it is known in the therapy art that results of a first living person’s therapy session can be enhanced by role playing by a second living person.

*G. Luke*

102. In Luke, a dead man in a coffin is brought back to life. Luke 7:14-15.

103. Luke describes having a living person in a coffin.

### III. DISCUSSION - EXAMINER'S REJECTION UNDER 35 U.S.C. § 102

#### A. *Background*

The statute on conditions for patentability (novelty and loss of right to patent), 35 U.S.C. § 102 (b), provides that a person shall be entitled to a patent unless:

[T]he invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

Findings of fact 57 through 61 show the sequence of the Third Non-final rejection and Applicants' response thereto.

#### B. *The Examiner's Prima Facie Case*

The Examiner's prima facie case of anticipation rests squarely on the following two key points:

(1) Nerenberg's commentary at page 19, where in an exemplary unused therapy option, "a first person (Joe's Mother) and a second person (Joe) [are] brought into the room. The second person (Joe) is directed to lay in the coffin." (Third Non-final, p. 3, ll. 1-7).

(2) A publication date for the Nerenberg book of March 20, 1999, which renders the commentary about the exemplary unused therapy option prior art vis-à-vis applicants under 35 U.S.C. § 102(b) because it was published more than one year prior to the effective filing date of the present application.

*C. Applicant's Response To The Examiner's Case*

We first address Appellants' Issue 3 of the Brief at pages 20-26 because our decision on this issue is dispositive for all the issues raised on appeal. Appellants essentially argue two points at Issue 3. Firstly, that the Examiner erred in not finding the Second and Third Declarations of the first named inventor persuasive to show that the date the Nerenberg book became publicly available was after December 20, 1999. (Brief at page 21) Secondly, that the Examiner erred in finding "the [Nerenberg book] is a reference that could be used against the claims of the present [application under] 35 U.S.C. § 102(b)." (Brief at page 20).

For the reasons discuss infra, we agree with Appellants' first point and we disagree with Appellants' second point.

(1)  
*What Is The Publication Date Of The Nerenberg Reference?*

We see little to be added to Appellants' arguments on this point. (Brief at pages 20-26). The Examiner has simply erred in treated the Nerenberg book as having a publication date of March 20, 1999, given the declaration evidence in the record. We agree with Appellants that the Second and Third Declarations are effective (absent additional evidence to the contrary) to establish that the actual publication data of the Nerenberg book was after December 20, 1999. Thus, the Nerenberg book is not

available as a prior art publication using its publication date as a basis for that availability. However, because of the nature of the content of the Nerenberg reference, that is not the end of the matter.

(2)

*Can A Reference That Has A Date Less Than One Year Before The Filing Date Of The Application Be Used To Anticipate Under 35 U.S.C. § 102(b)?*

It is our view, that the Examiner was correct in that the Nerenberg reference can be used to show lack of novelty or loss of right under 35 U.S.C. § 102(b). Appellants' Second and Third Declarations both declare that the Nerenberg reference was first printed on March 20, 1999, for the authors own use. These declarations provide evidence establishing that the events described in Nerenberg occurred on or before March 20, 1999. "The general rule is that administrative agencies like the PTO are not bound by the rules of evidence that govern judicial proceedings." In re Epstein, 32 F.3d 1559, 1565, 31 USPQ2d 1817, 1821 (Fed. Cir. 1994). Indeed, in ex parte patent prosecution hearsay may properly be considered. See, e.g., In re Reuter, 670 F.2d 1015, 1020-21, 210 USPQ 249, 254-55 (CCPA 1981). (The facts of how the evidence came into being did not affect its admissibility-only the weight to be accorded it.)

We are also of the view that the relevant teachings of the Nerenberg reference are limited to those teachings that describe public use or sale<sup>3</sup> occurring more than one

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<sup>3</sup> An impermissible sale has occurred if there was a definite sale, or offer to sell, more than 1 year before the effective filing date of the U.S. application and the subject matter

year before the filing date of the application. Thus, we find the relevant teachings of the Nerenberg reference include Findings of Fact 67 through 81, 83, and 85 through 88. We also find the relevant teachings of the Nerenberg reference do not include Finding of Fact 84.

(3)  
*Are Appellants' Claims 1, 4-8, 12-17, And 19-21  
Anticipated By The Nerenberg Reference?*

As we have already indicated the Examiner's prima facie case of anticipation rests on two key points. The first point is the teaching from page 19 of Nerenberg that corresponds to Finding of Fact 84. We have just found that teaching unavailable as prior art either based on its publication date or as a public use or on sale bar. Thus, the

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of the sale, or offer to sell, fully anticipated the claimed invention or would have rendered the claimed invention obvious by its addition to the prior art. Ferag AG v. Quipp, Inc., 45 F.3d 1562, 1565, 33 USPQ2d 1512, 1514 (Fed. Cir. 1995). The on-sale bar of 35 U.S.C. 102(b) is triggered if the invention is both (1) the subject of a commercial offer for sale not primarily for experimental purposes and (2) ready for patenting. Pfaff v. Wells Elecs., Inc., 525 U.S. 55, 67, 48 USPQ2d 1641, 1646-47 (1998). Traditional contract law principles are applied when determining whether a commercial offer for sale has occurred. See Linear Tech. Corp. v. Micrel, Inc., 275 F.3d 1040, 1048, 61 USPQ2d 1225, 1229 (Fed. Cir. 2001), petition for cert. filed, 71 USLW 3093 (Jul. 03, 2002) (No. 02-39); Group One, Ltd. v. Hallmark Cards, Inc., 254 F.3d 1041, 1047, 59 USPQ2d 1121, 1126 (Fed. Cir. 2001) ("As a general proposition, we will look to the Uniform Commercial Code (UCC') to define whether ... a communication or series of communications rises to the level of a commercial offer for sale.").

The application of 35 U.S.C. 102(b) is triggered by actually performing the claimed process itself for consideration. See Scaltech, Inc. v. Retec /Tetra, L.L.C., 269 F.3d 1321, 1328, 60 USPQ2d 1687, 1691 (Fed. Cir. 2001) (Patent was held invalid under 35 U.S.C. 102(b) based on patentee's offer to perform the claimed process for treating oil refinery waste more than one year before filing the patent application).

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Examiner's prima facie case falls under the weight of Appellants' evidence and arguments.

(4)  
*Are Appellants' Claims 9 And 10  
Obvious Over The Nerenberg Reference?*

Given the Examiner's prima facie case of obviousness rest on the same unavailable teaching from page 19 of Nerenberg, we find it also falls.

(5)  
*Conclusion*

For the reasons discussed above, we find Appellants have rebutted the Examiner's prima facie case of anticipation under 35 U.S.C. § 102 and the Examiner's prima facie case of obviousness under 35 U.S.C. § 103.

#### **IV. DISCUSSION - NEW GROUNDS OF REJECTION**

##### *A. Background*

We use our authority under 37 C.F.R. § 41.50(b) to enter new grounds of rejection of claims 1, 4-10, 12-17, and 19-21. The basis for this is set forth in detail below.

*B. New Grounds Of Rejection Under 35 U.S.C. § 101*

(1)  
*Introduction*

On April 30, 2003, the Examiner rejected claims 1, 4-10, 12-17, and 19-21 under 35 U.S.C. § 101 because they were directed to non-statutory subject matter in that the method steps lacked a “useful, concrete, and tangible result.” Specifically, the Examiner found “the result [of independent claims 1 and 19] of ‘improving a relationship’ is not considered to define a ‘useful, concrete and tangible result.’”

In response, Applicants amended the preamble of claims 1 and 19 to clarify the utility of the invention (Amendment D filed October 31, 2003, pages 2, 5, and 8). Applicants added the following underlined limitation to the preambles as shown in the complete claims at Appendix 6:

A therapeutic method for effectuating a behavior modification by at least one of a living first person and a living second person, said behavior modification relating to improving a relationship between the living first person and the living second person.

In turn, the Examiner found that the amendments overcame the rejection under 35 U.S.C. § 101. We disagree with the Examiner’s finding for the reasons discussed infra, and we apply the rejection anew.

(2)  
*Non-Statutory Subject Matter*

The Supreme Court has identified three categories of subject matter that are unpatentable, namely “laws of nature, natural phenomena, and abstract ideas.”

Diamond v. Diehr, 450 U.S. 175, 185, 209 USPQ 1, 7 (1981). Thus, “certain types of . . . subject matter, standing alone, represent nothing more than abstract ideas until reduced to some type of practical application, and thus that subject matter is not, in and of itself, entitled to patent protection.” In re Alappat, 33 F.3d 1526, 1543, 31 USPQ2d 1545, 1556-57 (Fed. Cir. 1994). However, “a process, machine, manufacture, or composition of matter employing a law of nature, natural phenomenon, or abstract idea is patentable subject matter even though a law of nature, natural phenomenon, or abstract idea would not, by itself, be entitled to such protection.” State Street Bank & Trust Co. v. Signature Financial Group, Inc., 149 F. 3d 1368, 1374, 47 USPQ2d 1596, 1601 (Fed. Cir. 1998).

“[T]o be patentable an [abstract idea] must be applied in a ‘useful’ way.” Id. 149 F.3d at 1373, 47 USPQ2d at 1601 (discussing abstract ideas in the form of unpatentable mathematical algorithms). “[T]he mere fact that a claimed invention involves [an abstract idea], in and of itself, would not render it nonstatutory subject matter, unless, its operation does not produce a ‘useful, concrete and tangible result.’” Id. 149 F.3d at 1374, 47 USPQ2d at 1602 (discussing mathematical algorithms).

When a claim containing an abstract idea applies that abstract idea “in a structure or process which, when considered as a whole, is performing a function which the patent laws were designed to protect (e. g., transforming or reducing an article to



a different state or thing), then the claim satisfies the requirements of § 101.” Diehr, 450 U.S. at 192, 209 USPQ at 10. Thus, “[i]n determining the eligibility of [Appellants’] claimed process for patent protection under § 101, their claims must be considered as a whole.” Id. 405 U.S. at 188, 209 USPQ at 9.

We are mindful that even though a finding of transformation or reduction of an article to a different state or thing is the quickest (and most straight forward) initial analysis to determine that a claim does comply with 35 U.S.C. § 101, such transformation or reduction “is not an invariable requirement, but merely one example of how a [law of nature or abstract idea] may bring about a useful application.” AT&T Corp. v. Excel Communications, Inc., 172 F.3d 1352, 1358-59, 50 USPQ2d 1447, 1452 (Fed. Cir. 1999). Thus, if the initial narrow analysis determines that the claim does not entail the transformation or reduction of an article, then the analysis must continue with a broader analysis to determine if the claim provides a practical application that produces a useful, tangible and concrete result. In Alappat, the court held that data, transformed to produce a smooth waveform display on a monitor, constituted a practical application of an abstract idea because it produced ‘a useful, concrete and tangible result’--the smooth waveform. Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557. Similarly in State Street, the court held that the transformation of data, representing discrete dollar amounts, into a final share price, constituted a practical application of an abstract idea, because it produced “a useful, concrete and tangible result”--a final share price

momentarily fixed for recording and reporting purposes. State Street, 149 F.3d at 1373, 47 USPQ2d at 1601.

Additionally, we are mindful that in determining whether a claim is for a “practical application,” the focus is not on whether the individual steps taken to achieve a particular result are useful, tangible and concrete, but rather that the final result achieved by the claimed invention as a whole is “useful, tangible and concrete.” See Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557 (discussing the useful, tangible and concrete result of claim 15); State Street, 149 F.3d at 1375, 47 USPQ2d at 1602 (discussing the useful, tangible and concrete result of claim 1); and AT&T Corp., 172 F.3d at 1358, 50 USPQ2d at 1452 (the claimed process applied the Boolean principle to produce a useful, concrete, tangible result). In AT&T Corp., the court stated the following:

In Alappat, we held that more than an abstract idea was claimed because ***the claimed invention as a whole*** was directed toward forming a specific machine that produced the useful, concrete, and tangible result of a smooth waveform display. AT&T Corp., 172 F.3d at 1358, 50 USPQ2d at 1452 (emphasis added).

Thus, if the broader analysis determines that no useful, tangible and concrete final result is achieved for the claim, the analysis has determined that the claim is nonstatutory.

(3)  
*Rejection under 35 U.S.C. § 101*

Claims 1, 4-10, 12-17, and 19-21 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Even if we accept as a given Applicants' position that they have established the "utility" of the invention by the amendment, this does not automatically establish that the result is also tangible and concrete as is also required by the statute.

Our review of the claims on appeal finds no physical transformation or reduction of an article to a different state or thing. The only transformation of the therapeutic process is a non-physical "behavioral modification by at least one of a living first person and a living second person." We contrast the claimed process to therapeutic behavioral modification processes where there is both a non-physical transformation and an accompanying physical transformation of the living person using pharmaceutical drugs. The latter "behavioral modification" process on its face is statutory subject matter based on the physical transformation test. However, we cannot say the same for the former claimed process based on the test.

Having found no physical transformation in the claimed process, we must now look to the result of the claimed process to determine if "as a whole" the claimed process produces "a useful, tangible, and concrete result." As already discussed, our review of the claims finds they produce a non-physical "behavioral modification." More

specifically, we find the result of the claims to be a transformation of the mental attitude of at least on living person. We base this finding on Applicants statement in the specification at page 3, lines 16-18, "by inducing the first person's sense or impression of loss of the second person, the first person gains an increased appreciation of the second person which has the effect of healing or enhancing the relationship." This shows the result of the claimed process as a whole to be "the first person gains an increased appreciation of the second person."

We see the question before us to be "[w]hether transformation of something intellectually or mentally, e.g., a mental attitude, is a useful, tangible, and concrete result?" We focus first on whether the result is tangible. In White-Smith Publishing Co. v. Apollo Co., 209 U.S. 1 (1908), the Court found:

The [copyright] statute has not provided for the protection of the *intellectual conception* apart from the thing produced, however meritorious such conception may be, but has provided for the making and filing of a *tangible thing*, against the publication and duplication of which it is the purpose of the statute to protect the composer. Id. at 17 (emphasis added).

Similarly in In re Sarkar, 588 F.2d 1330, 1333, 200 USPQ 132, 137 (CCPA 1978), the court found "mental processes are but disembodied thoughts, whereas inventions which Congress is constitutionally empowered to make patentable are tangible embodiments of ideas." Our reviewing courts have consistently distinguished between intellectual and tangible results. Thus, we find that Appellants' claims fail to produce a tangible result and fail to recite statutory subject matter under 35 U.S.C. § 101. Having shown the

result of the claimed process is not tangible; we deem it unnecessary to reach any conclusion on whether the result is useful or concrete.

*C. New Grounds Of Rejection Under 35 U.S.C. § 103*

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-8, 12-17, and 19-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nerenberg, Dennis, and Luke.

We find that, as shown by Findings of Fact 67 through 81, 83, and 85 through 88, Nerenberg evidences public use or sale of the subject matter of claims 1, 4-8, 12-17, and 19-21, except for (1) physically having the second living person in the coffin (appealed claims 1 and 19); and (2) after the instructing step, questioning the person using plural "questions" (appealed claims 13 and 21). Rather, Nerenberg describes (1) seeing the second living person as being in the coffin using imagination (Finding of Fact 72); and (2) after the instructing step, questioning the person using a single question (Finding of Fact 78).

Although Nereberg does not describe “physically” having the second living person in the coffin, such would have been obvious at the time the invention was made to a person having ordinary skill in the art because Luke 7:14-15 describes that a living person can be in a coffin and because Dennis describes improving behavior modification by having a role model act out steps of the therapy. Thus, it would have been obvious to have Joe’s mother get into the coffin in place of having Joe imagine her in the coffin.

Although Nereberg does not show after the instructing step, questioning the person using plural questions, such would have been obvious at the time the invention was made to a person having ordinary skill in the art because Nerenberg describes using a single question (Finding of Fact 78) and Nerenberg at pages 5-7 and 17 describes using sequences of questions to condition and instruct Joe. Thus, it would have been obvious to expand a single question into a sequence of questions.

Claims 9 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nerenberg, Dennis, Luke, and Zuk.

Although Nerenberg, Dennis, and Luke do not describe operating an electronic device located within the coffin, such would have been obvious at the time the invention was made to a person having ordinary skill in the art because Zuk describes the benefit of filming therapy sessions as an academic tool (Findings of Fact 94-96) and because

the benefit of hiding the electronic device in the coffin or elsewhere is self-evident so as not to corrupt the therapy session being filmed and thus limit the film's academic value.

*D. New Grounds Of Rejection Under 35 U.S.C. § 112, First Paragraph*

Claims 1, 4-10, and 12-17, are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the application before us, Applicants amended claim 1, from which claims 4-10 and 12-17 depend, in respond to the Second Non-final rejection based on the prior art play "Romeo and Juliet" and the movie "Mommy Dearest." Amendment C at page 3 added the following language to claim 1 as shown in Appendix 5:

wherein the second person is not acting in a theatrical performance, and  
wherein the second person is not rehearsing in preparation for acting in a  
theatrical performance.

We begin by noting that 35 U.S.C. § 112, first paragraph, of the Patent Act states that the "specification shall contain a written description of the invention." The Court of Appeals for the Federal Circuit held in Kao Corp. v. Unilever U.S., Inc., 441 F.3d 963, 967-968, 78 USPQ2d 1257, 1260 (Fed. Cir. 2006) (quoting Cordis Corp. v. Medtronic AVE, Inc., 339 F.3d 1352, 1364, 67 USPQ2d 1876, 1885 (Fed. Cir. 2003)):

To fulfill the written description requirement, the patent specification must describe an invention in sufficient detail that one skilled in the art can clearly conclude that the inventor invented what is claimed.

Our reviewing court has cautioned, however, that “[t]he disclosure as originally filed does not ... have to provide in haec verba support for the claimed subject matter at issue.” Cordis, 339 F.3d at 1364, 67 USPQ2d at 1885 (internal citation omitted).

“Although [the applicant] does not have to describe exactly the subject matter claimed, ... the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed.” In re Gosteli, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989) (citations omitted). Put another way, “the applicant must . . . convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention.” Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991) (emphasis in original).

The written description, although it need not include information that is already known and available to the experienced public, must be in sufficient detail to satisfy the statutory requirements, employing “[w]ords, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention.” Space Systems/Loral, Inc. v. Lockheed Martin Corp., 405 F.3d 985, 987, 74 USPQ2d 1534, 1535 (Fed. Cir. 2005) (quoting Lockwood v. American Airlines, Inc., 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997)).



"[C]ompliance with the written description requirement is a question of fact."  
Hyatt v. Boone, 146 F.3d 1348, 1352, 47 USPQ 2d 1128, 1130 (Fed. Cir. 1998) (citing Vas-Cath, 935 F.2d at 1563, 19 USPQ2d at 1116). It is well established that "the written description must include all of the limitations of the [claim], or the applicant must show that any absent text is necessarily comprehended in the description provided and would have been so understood at the time the patent application was filed." Hyatt, 146 F.3d at 1354-1355, 47 USPQ 2d 1132. Finally, "[p]recisely how close the original description must come to comply with the description requirement of section 112 must be determined on a case-by-case basis." Eiselstein v. Frank, 52 F.3d 1035, 1039, 34 USPQ2d 1467, 1470 (Fed. Cir. 1995) (quoting Vas-Cath, 935 F.2d at 1561, 19 USPQ2d at 1116).

We reach no conclusion about the appropriateness of the prior art rejection of the Second Non-final.<sup>4</sup> However, we find no explicit support in the specification for the limitation added to claim 1 by Amendment C filed September 17, 2001. Further, we find that the description does not allow persons of ordinary skill in the art to recognize that the invention includes what is now claimed. This is particularly true given that it is known in the therapy art to film therapy sessions thus rendering them into theatrical

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<sup>4</sup> Should the Examiner at some future point deem it necessary to again look to the theatrical prior art, we point out that a routine step in that art is the director's screening interview of potential actors to weed out actors that should not be on the stage. Should there be further use of theatrical prior art, this screening interview should be compared to the "determining whether to continue" step of claim 19.

performances (Findings of Fact 94 through 97). Appellants' own claim 35 (now cancelled) shown herein at Appendix 5, defines a movie as one type of theatrical performance. For these reasons, we find claims 1, 4-10, and 12-17, fail to comply with the written description requirement.

*E. New Grounds Of Rejection Under 35 U.S.C. § 112, Second Paragraph*

Claims 1, 4-10, and 12-17, are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

. . . a rose by any other name . . .

WILLIAM SHAKESPEARE, ROMEO AND JULIET act 2, sc.2.

. . . a rose is a rose is a rose . . .

GERTRUDE STEIN, Sacred Emily in GEOGRAPHY AND PLAYS.

It is unclear what limitation Appellants intended when they added the following language to claim 1 as shown in Appendix 5:

wherein the second person is not acting in a theatrical performance, and  
wherein the second person is not rehearsing in preparation for acting in a  
theatrical performance.

The disclosed and claimed therapy method is on its face "role playing" as to the second person and such role playing is inherently a form of theatrical performance. Therefore, the added language creates confusion as to what is being claimed.

## V. DECISION

Upon consideration of the record, and for the reasons given, the decision of the Examiner rejecting claims 1, 4-8, 12-17, and 19-21 based on 35 U.S.C. § 102 is reversed; and the decision of the Examiner rejecting claims 9 and 10 based on 35 U.S.C. § 103 is reversed.

We have entered numerous new grounds of rejection against claims 1, 4-10, 12-17, and 19-21 under 37 C.F.R. § 41.50(b) (2005).

37 C.F.R. § 41.50(b) provides that, "[a] new grounds of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of proceedings (37 C.F.R. § 1.197 (b) (2005)) as to the rejected claims:

- (1) Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner ...
- (2) Request that the proceeding be reheard under 37 C.F.R. § 41.52 by the Board upon the same record ...



Appeal No. 2006-1635  
Reissue Application No. 09/584,610

SCHMEISER, OLSEN & WATTS  
22 CENTURY HILL DRIVE  
SUITE 302  
LATHAM, NY 12110

Appeal No. 2006-1635  
Reissue Application No. 09/584,610

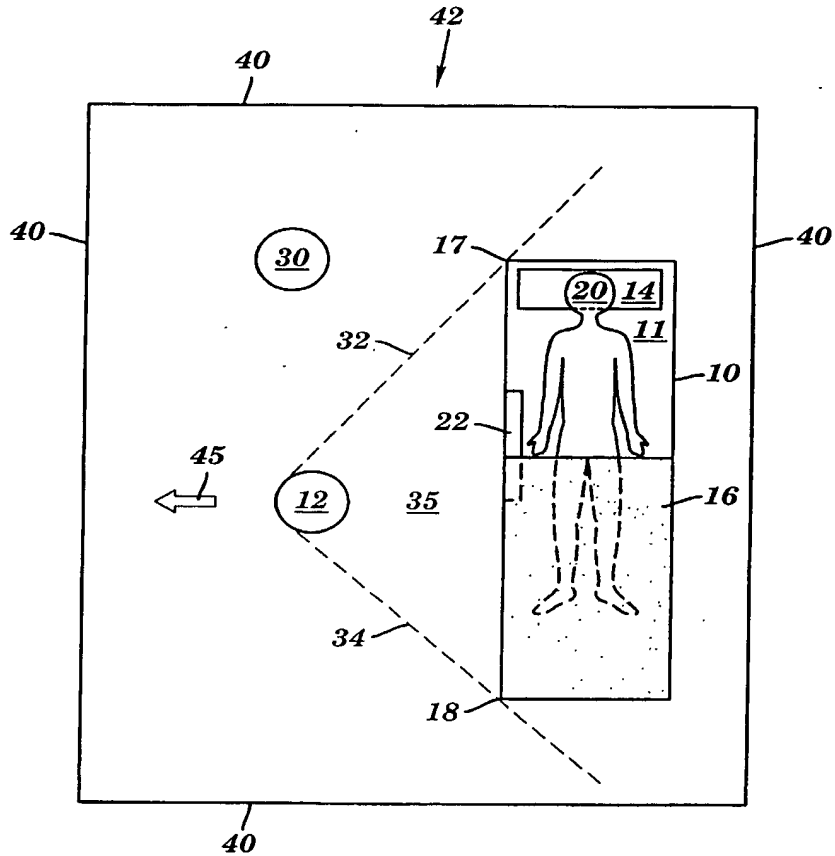
## **Appendix 1**

### Drawings of application, as filed

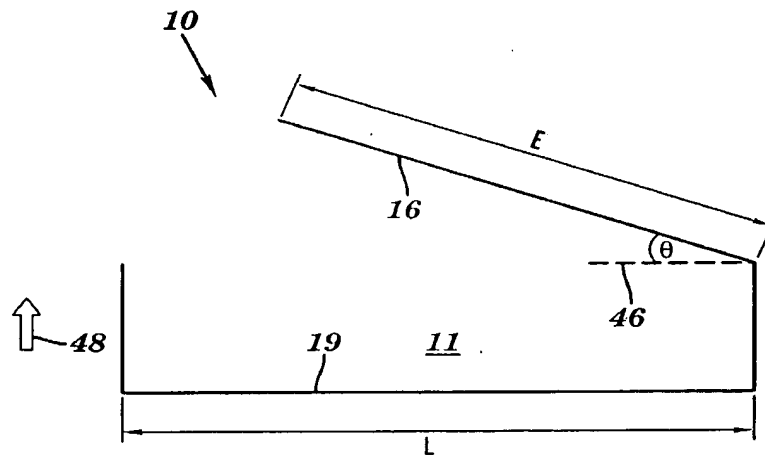
Brief description the drawings of Nerenberg et al., Application Number 10/211,217 published as Patent Application Publication US 2002/0187461 A1, claiming continuity to the present Application Number 09/584,610 (drawing sheets 1-2 of Nerenberg et al. are attached as appendix pages ii and iii).

Figure 1 depicts a top view of a coffin, a first person, and a facilitator, in accordance with embodiments of the present invention.

Figure 2 depicts a side cross-sectional view of the coffin of Figure 1.



**FIG. 1**



**FIG. 2**



## **Appendix 2**

### Claims of application, as filed

1. A therapeutic method, comprising the steps of:  
providing a coffin, wherein the coffin is visually available to a first person;  
directing the first person to see a second person as being in the coffin; and  
prompting the first person to express to the second person an emotion that the first person has in relation to the second person.
2. The method of claim 1, wherein the second person is not in the coffin.
3. The method of claim 1, wherein the second person is in the coffin.
4. The method of claim 1, wherein "to express" is selected from the group consisting of to verbally express, to non-verbally express, and a combination thereof.
5. The method of claim 1, wherein the directing and prompting steps are performed by a facilitator.
6. The method of claim 5, wherein the facilitator is selected from the group consisting of a professional therapist and a member of the clergy.
7. The method of claim 1, wherein the coffin includes a pillow that is visually available to the first person.
8. The method of claim 7, wherein a top end of the coffin partially covers the coffin.
9. The method of claim 1, further comprising operating an electronic device, said electronic device located within the coffin.
10. The method of claim 9, wherein the electronic device is selected from the group consisting of an audio device, a video device, and combinations thereof.
11. The method of claim 1, further comprising after the prompting step expressing the emotion, said expressing being accomplished by the first person.

12. The method of claim 11, wherein the emotion includes an emotional feeling selected from the group consisting of a love for the second person, a missing of the second person, an appreciation of what the second person did for the first person, a regret for having shown the second person disrespect, and a wish for a second chance to relate to the second person, and combinations thereof.
13. The method of claim 11, further comprising after the expressing step, post-testing the first person by having the first person respond to questions that pertain to the first person's attitude toward the second person.
14. The method of claim 1, further comprising directing the first person to envision himself or herself as being at his or her moment of despair (MOD) in relation to a destructive habit that the first person has.
15. The method of claim 14, further comprising conditioning the first person to use a trigger to induce a power thought in the first person.
16. The method of claim 14, further comprising directing the first person to pledge using a trigger for regularly inducing a power thought in the first person.
17. The method of claim 14, wherein the destructive habit includes a habitual practice selected from the group consisting of a habitual using of an illegal drug, a habitual smoking of tobacco, a habitual drinking of alcoholic beverages to a point of intoxication, a habitual aggressive driving of a motor vehicle, and a habitual showing of parent disrespect.
18. The method of claim 14, wherein the second person is the first person.
19. A therapeutic method, comprising the steps of:
  - pretesting a first person for a contraindication against continuing with the method;
  - if the pretesting step fails to disclose the contraindication,
    - providing a coffin, wherein the coffin is visually available to the first person;
    - directing the first person to see a second person as being in the coffin;
    - and
    - prompting the first person to express to the second person an emotion that the first person has in relation to the second person.

20. The method of claim 19, further comprising after the prompting step expressing the emotion, said expressing being accomplished by the first person.
21. The method of claim 20, further comprising after the expressing step post-testing the first person by having the first person respond to questions that pertain to the first person's attitude toward the second person.
22. A therapeutic structure, comprising:  
a coffin, said coffin being visually available to a first person;  
a visual image of a second person lying in the coffin, said visual image being seen by the first person; and  
an expression of an emotion that the first person has in relation to the second person, said expression being expressed by said first person.
23. The structure of claim 22, wherein the second person is not in the coffin.
24. The structure of claim 22, wherein the second person is in the coffin.
25. The structure of claim 22, wherein the expression is selected from the group consisting of a verbal expression, a non-verbal expression, and a combination thereof.
26. The structure of claim 22, wherein the coffin includes a pillow that is visually available to the first person.
27. The structure of claim 22, wherein a top end of the coffin partially covers the coffin.
28. The structure of claim 22, wherein the emotion includes an emotional feeling selected from the group consisting of a love for the second person, a missing of the second person, an appreciation of what the second person did for the first person, a regret for having shown the second person disrespect, and a wish for a second chance to relate to the second person, and combinations thereof.
29. The structure of claim 22, further comprising an envisioning by the first person of the first person being at the first person's moment of despair (MOD) in relation to a destructive habit that the first person has.
30. The structure of claim 29, further comprising a directing of the first person to pledge using a trigger for inducing a power thought in the first person.

31. The structure of claim 29, further comprising a conditioning of the first person to use a trigger to regularly induce a power thought in the first person.
32. The structure of claim 29, wherein the destructive habit includes a habitual practice selected from the group consisting of a habitual using of an illegal drug, a habitual smoking of tobacco, a habitual drinking of alcoholic beverages to a point of intoxication, a habitual aggressive driving of a motor vehicle, and a habitual showing of parent disrespect.
33. The structure of claim 29, wherein the second person is the first person.
34. A therapeutic structure, comprising  
a coffin, said coffin being visually available to a first person,  
wherein a visual image of a second person lying in the coffin is being seen by the  
first person, and  
wherein an emotion that the first person has in relation to the second person is  
being expressed by the first person, and wherein said second person is  
not in the coffin.

### Appendix 3

January 23, 2001 Claims As Amended In Response  
To **First** Non-Final Action

(matter underlined added by the amendment)  
(matter in [brackets] deleted by the amendment)

1. A therapeutic method, comprising the steps of:  
providing a coffin, wherein the coffin is visually available to a first person;  
directing the first person to see a second person as being in the coffin, wherein  
the second person is alive; and  
instructing [prompting] the first person to speak [express] to the second person  
[an emotion that the first person has in relation to the second person].
2. The method of claim 1, wherein the second person is not in the coffin.
3. The method of claim 1, wherein the second person is in the coffin.
4. The method of claim 1, wherein ["to express" is selected from the group  
consisting of to verbally express, to non-verbally express, and a combination thereof]  
the instructing step includes instructing the first person to speak to the second person of  
an emotion that the first person has for the second person.
5. The method of claim 1, wherein the directing and instructing [prompting] steps  
are performed by a facilitator.
6. The method of claim 5, wherein the facilitator is selected from the group  
consisting of a professional therapist and a member of the clergy.
7. The method of claim 1, wherein the coffin includes a pillow that is visually  
available to the first person.
8. The method of claim 7, wherein a top end of the coffin partially covers the coffin.
9. The method of claim 1, further comprising operating an electronic device, said  
electronic device located within the coffin.

10. The method of claim 9, wherein the electronic device is selected from the group consisting of an audio device, a video device, and combinations thereof.

11. (Cancelled)

12. The method of claim 1 [11], wherein the [emotion includes an emotional feeling] instructing step includes instructing the first person to speak to the second person of something selected from the group consisting of a love for the second person, a missing of the second person, an appreciation of what the second person did for the first person, a regret for having shown the second person disrespect, and a wish for a second chance to relate to the second person, and combinations thereof.

13. The method of claim 1 [11], further comprising after the instructing [expressing] step, [post-testing the first person by having the first person respond to questions that pertain] questioning the first person using questions having predetermined fixed responses and pertaining to the first person's attitude toward the second person.

14. The method of claim 1, further comprising directing the first person to envision himself or herself as being at his or her moment of despair (MOD) in relation to a destructive habit that the first person has.

15. The method of claim 14, further comprising conditioning the first person to use a trigger to induce a power thought in the first person.

16. The method of claim 14, further comprising directing the first person to pledge using a trigger for regularly inducing a power thought in the first person.

17. The method of claim 14, wherein the destructive habit includes a habitual practice selected from the group consisting of a habitual using of an illegal drug, a habitual smoking of tobacco, a habitual drinking of alcoholic beverages to a point of intoxication, a habitual aggressive driving of a motor vehicle, and a habitual showing of parent disrespect.

18. (Cancelled)

19. A therapeutic method, comprising the steps of:  
[pretesting a first person for a contraindication against continuing with the method;  
if the pretesting step fails to disclose the contraindication,]  
prior to administering the therapeutic method, determining whether to continue with the therapeutic method, including questioning a first person using first questions having predetermined fixed responses, and evaluating the responses of the first person to the first questions; and  
if the evaluating determines that the therapeutic method should continue:  
providing a coffin, wherein the coffin is visually available to the first person;  
directing the first person to see a second person as being in the coffin, wherein the second person is alive; and  
instructing [prompting] the first person to speak [express] to the second person [an emotion that the first person has in relation to the second person].
20. The method of claim 19, [further comprising after the prompting step expressing the emotion, said expressing being accomplished by the first person]  
wherein the instructing step includes instructing the first person to speak to the second person of an emotion that the first person has for the second person.
21. The method of claim 19 [20], further comprising after the instructing [expressing] step [post-testing the first person by having the first person respond to questions that pertain] questioning the first person using second questions having predetermined fixed responses and pertaining to the first person's attitude toward the second person.
22. A therapeutic structure, comprising:  
a coffin, said coffin being visually available to a first person;  
a visual image of a second person lying in the coffin, said visual image being seen by the first person, said second person being alive; and  
[an expression of an emotion that the first person has in relation to the second person, said expression being expressed by said first person]  
means for instructing the first person to speak to the second person.
23. The structure of claim 22, wherein the second person is not in the coffin.

24. The structure of claim 22, wherein the second person is in the coffin.
25. The structure of claim 22, wherein the [expression is selected from the group consisting of a verbal expression, a non-verbal expression, and a combination thereof] wherein the means for instructing includes means for instructing the first person to speak to the second person of an emotion that the first person has for the second person.
26. The structure of claim 22, wherein the coffin includes a pillow that is visually available to the first person.
27. The structure of claim 22, wherein a top end of the coffin partially covers the coffin.
28. The structure of claim 22, wherein [the emotion includes an emotional feeling] means for instructing includes means for instructing the first person to speak to the second person of something selected from the group consisting of a love for the second person, a missing of the second person, an appreciation of what the second person did for the first person, a regret for having shown the second person disrespect, and a wish for a second chance to relate to the second person, and combinations thereof.
29. The structure of claim 22, further comprising [an] means for envisioning by the first person of the first person being at the first person's moment of despair (MOD) in relation to a destructive habit that the first person has.
30. The structure of claim 29, further comprising [a] means for directing [of] the first person to pledge using a trigger for inducing a power thought in the first person.
31. The structure of claim 29, further comprising [a] means for conditioning [of] the first person to use a trigger to regularly induce a power thought in the first person.
32. The structure of claim 29, wherein the destructive habit includes a habitual practice selected from the group consisting of a habitual using of an illegal drug, a habitual smoking of tobacco, a habitual drinking of alcoholic beverages to a point of intoxication, a habitual aggressive driving of a motor vehicle, and a habitual showing of parent disrespect.
33. through 34. (Cancelled)



#### Appendix 4

June 25, 2001 Claims As Amended In Response To The  
**First** Final Rejection and Approved For Entry By The Examiner

(matter underlined added by the amendment)  
(matter in [brackets] deleted by the amendment)

1. A therapeutic method for improving a relationship between a living first person and a living second person, comprising the steps of:  
providing a coffin, wherein the coffin is visually available to the [a] first person;  
having the second person in the coffin;  
directing the first person to see the [a] second person as being in the coffin  
[, wherein the second person is alive] ; and  
instructing the first person to speak to the second person in relation to a relationship between the first person and the second person.
2. (Cancelled)
3. (Cancelled)
4. The method of claim 1, wherein the instructing step includes instructing the first person to speak to the second person of an emotion that the first person has for the second person.
5. The method of claim 1, wherein the directing and instructing steps are performed by a facilitator.
6. The method of claim 5, wherein the facilitator is selected from the group consisting of a professional therapist and a member of the clergy.
7. The method of claim 1, wherein the coffin includes a pillow that is visually available to the first person.
8. The method of claim 7, wherein a top end of the coffin partially covers the coffin.

9. The method of claim 1, further comprising operating an electronic device, said electronic device located within the coffin.
10. The method of claim 9, wherein the electronic device is selected from the group consisting of an audio device, a video device, and combinations thereof.
11. (Cancelled)
12. The method of claim 1, wherein the instructing step includes instructing the first person to speak to the second person of something selected from the group consisting of a love for the second person, a missing of the second person, an appreciation of what the second person did for the first person, a regret for having shown the second person disrespect, and a wish for a second chance to relate to the second person, and combinations thereof.
13. The method of claim 1, further comprising after the instructing step, questioning the first person using questions having predetermined fixed responses and pertaining to the first person's attitude toward the second person.
14. The method of claim 1, further comprising directing the first person to envision himself or herself as being at his or her moment of despair (MOD) in relation to a destructive habit that the first person has.
15. The method of claim 14, further comprising conditioning the first person to use a trigger to induce a power thought in the first person.
16. The method of claim 14, further comprising directing the first person to pledge using a trigger for regularly inducing a power thought in the first person.
17. The method of claim 14, wherein the destructive habit includes a habitual practice selected from the group consisting of a habitual using of an illegal drug, a habitual smoking of tobacco, a habitual drinking of alcoholic beverages to a point of intoxication, a habitual aggressive driving of a motor vehicle, and a habitual showing of parent disrespect.

19. A therapeutic method for improving a relationship between a living first person and a living second person, comprising the steps of:

prior to administering the therapeutic method, determining whether to continue with the therapeutic method, including questioning a first person using first questions having predetermined fixed responses, and evaluating the responses of the first person to the first questions; and

if the evaluating determines that the therapeutic method should continue:

providing a coffin, wherein the coffin is visually available to the [a] first person;

having a second person in the coffin;

directing the first person to see the [a] second person as being in the coffin [, wherein the second person is alive] ; and

instructing the first person to speak to the second person in relation to a relationship between the first person and the second person.

20. The method of claim 19, wherein the instructing step includes instructing the first person to speak to the second person of an emotion that the first person has for the second person.

21. The method of claim 19, further comprising after the instructing step questioning the first person using second questions having predetermined fixed responses and pertaining to the first person's attitude toward the second person.

22. through 32. (Cancelled)

## Appendix 5

### September 17, 2001 Claims As Amended In Response To **Second** Non-Final Action

(matter underlined added by the amendment)  
(matter in [brackets] deleted by the amendment)

1. A therapeutic method for improving a relationship between a living first person and a living second person, comprising the steps of:  
providing a coffin, wherein the coffin is visually available to the first person;  
having the second person in the coffin;  
directing the first person to see the second person as being in the coffin; and  
instructing the first person to speak to the second person in relation to a relationship between the first person and the second person, wherein the second person is not acting in a theatrical performance, and wherein the second person is not rehearsing in preparation for acting in a theatrical performance.
4. The method of claim 1, wherein the instructing step includes instructing the first person to speak to the second person of an emotion that the first person has for the second person.
5. The method of claim 1, wherein the directing and instructing steps are performed by a facilitator.
6. The method of claim 5, wherein the facilitator is selected from the group consisting of a professional therapist and a member of the clergy.
7. The method of claim 1, wherein the coffin includes a pillow that is visually available to the first person.
8. The method of claim 7, wherein a top end of the coffin partially covers the coffin.
9. The method of claim 1, further comprising operating an electronic device, said electronic device located within the coffin.

10. The method of claim 9, wherein the electronic device is selected from the group consisting of an audio device, a video device, and combinations thereof.
12. The method of claim 1, wherein the instructing step includes instructing the first person to speak to the second person of something selected from the group consisting of a love for the second person, a missing of the second person, an appreciation of what the second person did for the first person, a regret for having shown the second person disrespect, and a wish for a second chance to relate to the second person, and combinations thereof.
13. The method of claim 1, further comprising after the instructing step, questioning the first person using questions having predetermined fixed responses and pertaining to the first person's attitude toward the second person.
14. The method of claim 1, further comprising directing the first person to envision himself or herself as being at his or her moment of despair (MOD) in relation to a destructive habit that the first person has.
15. The method of claim 14, further comprising conditioning the first person to use a trigger to induce a power thought in the first person.
16. The method of claim 14, further comprising directing the first person to pledge using a trigger for regularly inducing a power thought in the first person.
17. The method of claim 14, wherein the destructive habit includes a habitual practice selected from the group consisting of a habitual using of an illegal drug, a habitual smoking of tobacco, a habitual drinking of alcoholic beverages to a point of intoxication, a habitual aggressive driving of a motor vehicle, and a habitual showing of parent disrespect.

19. A therapeutic method for improving a relationship between a living first person and a living second person, comprising the steps of:

prior to administering the therapeutic method, determining whether to continue with the therapeutic method, including questioning a first person using first questions having predetermined fixed responses, and evaluating the responses of the first person to the first questions; and

if the evaluating determines that the therapeutic method should continue:

providing a coffin, wherein the coffin is visually available to the first person;

having a second person in the coffin;

directing the first person to see the second person as being in the coffin; and

instructing the first person to speak to the second person in relation to a relationship between the first person and the second person.

20. The method of claim 19, wherein the instructing step includes instructing the first person to speak to the second person of an emotion that the first person has for the second person.

21. The method of claim 19, further comprising after the instructing step questioning the first person using second questions having predetermined fixed responses and pertaining to the first person's attitude toward the second person.

35. (Newly Added) The method of claim 1, wherein the theatrical performance is selected from the group consisting of a drama, a movie, a storytelling, and a poetry recital.

**Appendix 6**

October 31, 2003 Claims As Amended In Response  
To **Third** Non-Final Action

(matter underlined added by the amendment)  
(matter in [brackets] deleted by the amendment)

1. A therapeutic method for effectuating a behavior modification by at least one of a living first person and a living second person, said behavior modification relating to improving a relationship between the [a] living first person and the [a] living second person, comprising the steps of:
  - providing a coffin, wherein the coffin is visually available to the first person;
  - having the second person in the coffin;
  - directing the first person to see the second person as being in the coffin; and
  - instructing the first person to speak to the second person in relation to a relationship between the first person and the second person, wherein the second person is not acting in a theatrical performance, and wherein the second person is not rehearsing in preparation for acting in a theatrical performance.
4. The method of claim 1, wherein the instructing step includes instructing the first person to speak to the second person of an emotion that the first person has for the second person.
5. The method of claim 1, wherein the directing and instructing steps are performed by a facilitator.
6. The method of claim 5, wherein the facilitator is selected from the group consisting of a professional therapist and a member of the clergy.
7. The method of claim 1, wherein the coffin includes a pillow that is visually available to the first person.
8. The method of claim 7, wherein a top end of the coffin partially covers the coffin.

9. The method of claim 1, further comprising operating an electronic device, said electronic device located within the coffin.

10. The method of claim 9, wherein the electronic device is selected from the group consisting of an audio device, a video device, and combinations thereof.

12. The method of claim 1, wherein the instructing step includes instructing the first person to speak to the second person of something selected from the group consisting of a love for the second person, a missing of the second person, an appreciation of what the second person did for the first person, a regret for having shown the second person disrespect, and a wish for a second chance to relate to the second person, and combinations thereof.

13. The method of claim 1, further comprising after the instructing step, questioning the first person using questions having predetermined fixed responses and pertaining to the first person's attitude toward the second person.

14. The method of claim 1, further comprising directing the first person to envision himself or herself as being at his or her moment of despair (MOD) in relation to a destructive habit that the first person has.

15. The method of claim 14, further comprising conditioning the first person to use a trigger to induce a power thought in the first person.

16. The method of claim 14, further comprising directing the first person to pledge using a trigger for regularly inducing a power thought in the first person.

17. The method of claim 14, wherein the destructive habit includes a habitual practice selected from the group consisting of a habitual using of an illegal drug, a habitual smoking of tobacco, a habitual drinking of alcoholic beverages to a point of intoxication, a habitual aggressive driving of a motor vehicle, and a habitual showing of parent disrespect.



19. A therapeutic method for effectuating a behavior modification by at least one of a living first person and a living second person, said behavior modification relating to improving a relationship between the [a] living first person and the [a] living second person, comprising the steps of:

prior to administering the therapeutic method, determining whether to continue with the therapeutic method, including questioning a first person using first questions having predetermined fixed responses, and evaluating the responses of the first person to the first questions; and

if the evaluating determines that the therapeutic method should continue:

providing a coffin, wherein the coffin is visually available to the first person;

having a second person in the coffin;

directing the first person to see the second person as being in the coffin;  
and

instructing the first person to speak to the second person in relation to a relationship between the first person and the second person.

20. The method of claim 19, wherein the instructing step includes instructing the first person to speak to the second person of an emotion that the first person has for the second person.

21. The method of claim 19, further comprising after the instructing step questioning the first person using second questions having predetermined fixed responses and pertaining to the first person's attitude toward the second person.

35. (Cancelled)

## **Appendix 7**

### The Claims On Appeal

1. A therapeutic method for effectuating a behavior modification by at least one of a living first person and a living second person, said behavior modification relating to improving a relationship between the living first person and the living second person, comprising the steps of:
  - providing a coffin, wherein the coffin is visually available to the first person;
  - having the second person in the coffin;
  - directing the first person to see the second person as being in the coffin; and
  - instructing the first person to speak to the second person in relation to a relationship between the first person and the second person, wherein the second person is not acting in a theatrical performance, and wherein the second person is not rehearsing in preparation for acting in a theatrical performance.
4. The method of claim 1, wherein the instructing step includes instructing the first person to speak to the second person of an emotion that the first person has for the second person.
5. The method of claim 1, wherein the directing and instructing steps are performed by a facilitator.
6. The method of claim 5, wherein the facilitator is selected from the group consisting of a professional therapist and a member of the clergy.
7. The method of claim 1, wherein the coffin includes a pillow that is visually available to the first person.
8. The method of claim 7, wherein a top end of the coffin partially covers the coffin.
9. The method of claim 1, further comprising operating an electronic device, said electronic device located within the coffin.
10. The method of claim 9, wherein the electronic device is selected from the group consisting of an audio device, a video device, and combinations thereof.

12. The method of claim 1, wherein the instructing step includes instructing the first person to speak to the second person of something selected from the group consisting of a love for the second person, a missing of the second person, an appreciation of what the second person did for the first person, a regret for having shown the second person disrespect, and a wish for a second chance to relate to the second person, and combinations thereof.

13. The method of claim 1, further comprising after the expressing step, post-testing the first person by having the first person respond to questions that pertain to the first person's attitude toward the second person.

14. The method of claim 1, further comprising directing the first person to envision himself or herself as being at his or her moment of despair (MOD) in relation to a destructive habit that the first person has.

15. The method of claim 14, further comprising conditioning the first person to use a trigger to induce a power thought in the first person.

16. The method of claim 14, further comprising directing the first person to pledge using a trigger for regularly inducing a power thought in the first person.

17. The method of claim 14, wherein the destructive habit includes a habitual practice selected from the group consisting of a habitual using of an illegal drug, a habitual smoking of tobacco, a habitual drinking of alcoholic beverages to a point of intoxication, a habitual aggressive driving of a motor vehicle, and a habitual showing of parent disrespect.

19. A therapeutic method for effectuating a behavior modification by at least one of a living first person and a living second person, said behavior modification relating to improving a relationship between the living first person and the living second person, comprising the steps of:

- prior to administering the therapeutic method, determining whether to continue with the therapeutic method, including questioning a first person using first questions having predetermined fixed responses, and evaluating the responses of the first person to the first questions; and

- if the evaluating determines that the therapeutic method should continue:

- providing a coffin, wherein the coffin is visually available to the first person;

- having a second person in the coffin;

- directing the first person to see the second person as being in the coffin; and

- instructing the first person to speak to the second person in relation to a relationship between the first person and the second person.

20. The method of claim 19, wherein the instructing step includes instructing the first person to speak to the second person of an emotion that the first person has for the second person.

21. The method of claim 19, further comprising after the instructing step questioning the first person using second questions having predetermined fixed responses and pertaining to the first person's attitude toward the second person.